

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JAN 16 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

DANIEL MERCADO,

Appellant.

)
)
) 2 CA-CR 2008-0136
) DEPARTMENT A
)

) MEMORANDUM DECISION
) Not for Publication
) Rule 111, Rules of
) the Supreme Court
)

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20060483

Honorable Robert Duber II, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

E S P I N O S A, Judge.

¶1 Following a jury trial, Daniel Mercado was convicted of resisting arrest. The trial court suspended the imposition of sentence and placed Mercado on probation. Subsequently, the state filed a petition to revoke probation and, after a violation hearing, the trial court found the state had proven Mercado had committed the “new offense[] of Domestic Violence Disorderly Conduct.” The court revoked Mercado’s probation and sentenced him to a presumptive, one-year term of imprisonment, with credit for ninety-three days’ presentence incarceration. This appeal followed. We affirm.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Mercado has not filed a supplemental brief. As requested, and pursuant to our obligation under *Anders*, we have reviewed the entire record for fundamental error, including the issue counsel identified as possibly “provid[ing] the appearance of an arguable issue.”

¶3 Viewed in the light most favorable to upholding the trial court’s ruling, *see State v. Thomas*, 196 Ariz. 312, ¶ 3, 996 P.2d 113, 114 (App. 1999), the evidence supported the court’s finding that Mercado had committed disorderly conduct against his mother by engaging in “loud and offensive name calling,” failing to leave his mother’s residence when she told him to go, and throwing a telephone. *See* A.R.S. § 13-2904. Mercado’s probation included a condition that he “obey all laws.” The court acted well within its discretion by revoking Mercado’s probation and sentencing him to the presumptive prison term. *See* A.R.S. § 13-917(B) (trial court may revoke probation in its discretion and impose prison term as authorized by law); *Thomas*, 196 Ariz. 312, ¶ 3, 996 P.2d at 114 (unless trial court’s finding that defendant violated probation “is arbitrary or unsupported by any theory of evidence,” reviewing court will not disturb ruling). Having found no fundamental, reversible error, we affirm the trial court’s revocation of Mercado’s probation and the prison term imposed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge